IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2085 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANUBEN WD/O. MOHANBHAI MAKANABHAI RATHOD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2085 of 2004

MR AR SHAIKH for Petitioner No. 1

MR AY KOGJE, AGP for Respondent No. 1-3

NOTICE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenue has challenged her detention order dated 08-01-2004, by which she is detained under P.A.S.A. as a "bootlegger". Along with the said order, the petitioner is served with the grounds of detention. In the grounds of detention, there is a reference about five criminal cases registered against the petitioner. All these cases are registered under the Bombay Prohibition Act. However, no statement

of any witness is recorded by the authority. The detaining authority after considering the material on record has passed the order of detention, which is impugned in this petition.

2) Ms.Dutta, learned advocate for the petitioner submitted that the last incident registered against the petitioner is of 4th December, 2003, and after a considerable time of about one month and four days the order of detention was passed on 08-01-2004. She submitted that when there are registered cases against the petitioner, it was not necessary to wait for such a long time for passing the order of detention, especially when there is no other material available and even statements of witnesses are not recorded. She submitted that, therefore, on the ground of delay in passing the order, this petition is required to be allowed.

3) In support of her say, learned advocate for the petitioner has relied upon the decision of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City & Others reported in 1997 (1) G.L.H. 381 wherein this Court has observed in Para 21 as under:-

> "21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appeared to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V.

State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993(2) Suppli. SCC 61."

4) Unfortunately, no affidavit in reply has been filed by the authority explaining the delay in passing the detention order, and even no file is made available for the perusal of the Court. Therefore, the averments made in the petition about delay in passing the order, is not controverted by the authority. Under these circumstances, there is no other alternative but to set aside the order of detention on the ground of delay in passing the detention order from the date of last incident, especially when the detention order is passed on the sole basis of criminal cases pending against the petitioner.

5) For the foregoing reasons, this petition is allowed. The order of detention dated 08-01-2004 is quashed and set aside. The detenue, Manuben Wd/o. Mohanbhai Makanabhai Rathod is ordered to be set at liberty forthwith, if she is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)
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